

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Finance, to which was referred House Bill No. 1815, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 15, between lines 23 and 24, begin a new paragraph and insert:
- 2 "SECTION 30. IC 6-2.5-6-9 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 9. (a) In
- 4 determining the amount of state gross retail and use taxes which he
- 5 must remit under section 7 of this chapter, a retail merchant shall,
- 6 **subject to subsection (c)**, deduct from his gross retail income from
- 7 retail transactions made during a particular reporting period, an amount
- 8 equal to his receivables which:
- 9 (1) resulted from retail transactions in which the retail merchant
- 10 did not collect the state gross retail or use tax from the purchaser;
- 11 (2) resulted from retail transactions on which the retail merchant
- 12 has previously paid the state gross retail or use tax liability to the
- 13 department; and
- 14 (3) were written off as an uncollectible debt for federal tax
- 15 purposes **under Section 166 of the Internal Revenue Code**
- 16 during the particular reporting period.
- 17 (b) If a retail merchant deducts a receivable under subsection (a)
- 18 and subsequently collects **all or part of** that receivable, then the retail
- 19 merchant shall include the amount collected as part of his gross retail
- 20 income from retail transactions for the particular reporting period in
- 21 which he makes the collection.

1 (c) The following provisions apply to a deduction for a
2 receivable treated as uncollectible debt under subsection (a):

3 (1) The deduction does not include interest.

4 (2) The amount of the deduction shall be determined in the
5 manner provided by Section 166 of the Internal Revenue
6 Code for bad debts but shall be adjusted to exclude:

7 (A) financing charges or interest;

8 (B) sales or use taxes charged on the purchase price;

9 (C) uncollectible amounts on property that remain in the
10 possession of the seller until the full purchase price is paid;

11 (D) expenses incurred in attempting to collect any debt;
12 and

13 (E) repossessed property.

14 (3) The deduction shall be claimed on the return for the
15 period during which the receivable is written off as
16 uncollectible in the claimant's books and records and is
17 eligible to be deducted for federal income tax purposes. For
18 purposes of this subdivision, a claimant who is not required to
19 file federal income tax returns may deduct an uncollectible
20 receivable on a return filed for the period in which the
21 receivable is written off as uncollectible in the claimant's
22 books and records and would be eligible for a bad debt
23 deduction for federal income tax purposes if the claimant
24 were required to file a federal income tax return.

25 (4) If the amount of uncollectible receivables claimed as a
26 deduction by a retail merchant for a particular reporting
27 period exceeds the amount of the retail merchant's taxable
28 sales for that reporting period, the retail merchant may file a
29 refund claim under IC 6-8.1-9. However, the deadline for
30 refund claim shall be measured from the due date of the
31 return for the reporting period on which the deduction for the
32 uncollectible receivables could first be claimed.

33 (5) If a retail merchant's filing responsibilities have been
34 assumed by a certified service provider (as defined in
35 IC 6-2.5-11-2), the certified service provider may claim, on
36 behalf of the retail merchant, any deduction or refund for
37 uncollectible receivables provided by this section. The
38 certified service provider must credit or refund the full
39 amount of any deduction or refund received to the retail
40 merchant.

41 (6) For purposes of reporting a payment received on a
42 previously claimed uncollectible receivable, any payments

made on a debt or account shall be applied first proportionally to the taxable price of the property and the state gross retail tax or use tax thereon, and secondly to interest, service charges, and any other charges.

(7) A retail merchant claiming a deduction for an uncollectible receivable may allocate that receivable among the states that are members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation."

Page 15, line 24, delete "IC 6-8.1-16" and insert "IC 6-2.5-12".

Page 15, line 27, delete "16." and insert "12.".

Page 19, between lines 29 and 30, begin a new paragraph and insert:

"SECTION 32. IC 6-2.5-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]:

Chapter 13. General Sourcing Rules

Sec. 1. (a) As used in this section, the terms "receive" and "receipt" mean:

- (1) taking possession of tangible personal property;
- (2) making first use of services; or
- (3) taking possession or making first use of digital goods;

whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(b) This section:

- (1) applies regardless of the characterization of a product as tangible personal property, a digital good, or a service;
- (2) applies only to the determination of a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product; and
- (3) does not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

(c) This section does not apply to sales or use taxes levied on the following:

- (1) The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of this article.
- (2) The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g). The retail sale of these items shall be sourced according to the

requirements of this article, and the lease or rental of these items must be sourced according to subsection (f).

(3) Telecommunications services, as set forth in IC 6-2.5-12, shall be sourced in accordance with IC 6-2.5-12.

(d) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

(3) When subdivisions (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(4) When subdivisions (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(5) When none of the previous rules of subdivision (1), (2), (3), or (4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

(e) The lease or rental of tangible personal property, other than property identified in subsection (f) or (g), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a

1 retail sale in accordance with the provisions of subsection (d).
2 Periodic payments made subsequent to the first payment are
3 sourced to the primary property location for each period
4 covered by the payment. The primary property location shall
5 be as indicated by an address for the property provided by the
6 lessee that is available to the lessor from its records
7 maintained in the ordinary course of business, when use of
8 this address does not constitute bad faith. The property
9 location shall not be altered by intermittent use at different
10 locations, such as use of business property that accompanies
11 employees on business trips and service calls.

12 (2) For a lease or rental that does not require recurring
13 periodic payments, the payment is sourced the same as a retail
14 sale in accordance with the provisions of subsection (d).

15 This subsection does not affect the imposition or computation of
16 sales or use tax on leases or rentals based on a lump sum or an
17 accelerated basis, or on the acquisition of property for lease.

18 (f) The lease or rental of motor vehicles, trailers, semitrailers,
19 or aircraft that do not qualify as transportation equipment, as
20 defined in subsection (g), shall be sourced as follows:

21 (1) For a lease or rental that requires recurring periodic
22 payments, each periodic payment is sourced to the primary
23 property location. The primary property location shall be as
24 indicated by an address for the property provided by the
25 lessee that is available to the lessor from its records
26 maintained in the ordinary course of business, when use of
27 this address does not constitute bad faith. This location shall
28 not be altered by intermittent use at different locations.

29 (2) For a lease or rental that does not require recurring
30 periodic payments, the payment is sourced the same as a retail
31 sale in accordance with the provisions of subsection (d).

32 This subsection does not affect the imposition or computation of
33 sales or use tax on leases or rentals based on a lump sum or
34 accelerated basis, or on the acquisition of property for lease.

35 (g) The retail sale, including lease or rental, of transportation
36 equipment shall be sourced the same as a retail sale in accordance
37 with the provisions of subsection (d), notwithstanding the exclusion
38 of lease or rental in subsection (d). As used in this subsection,
39 "transportation equipment" means any of the following:

40 (1) Locomotives and railcars that are used for the carriage of
41 persons or property in interstate commerce.

42 (2) Trucks and truck-tractors with a gross vehicle weight

rating (GVWR) of ten thousand one (10,001) pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) registered through the International Registration Plan; and

(B) operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3).

Sec. 2. (a) Notwithstanding section 1 of this chapter, a business purchaser that:

(1) is not a holder of a direct pay permit; and

(2) knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one (1) jurisdiction;

shall deliver to the seller in conjunction with its purchase a form disclosing this fact ("multiple points of use" or "MPU" exemption form).

(b) Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

(c) A purchaser delivering the MPU exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

(d) The MPU exemption form remains in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principle of subsection (c) and the facts existing at the time of the sale) until it is revoked in writing.

(e) A holder of a direct pay permit shall not be required to deliver a MPU exemption form to the seller. A direct pay permit

holder shall follow the provisions of subsection (c) in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one (1) jurisdiction.

Sec. 3. (a) Notwithstanding section 1 of this chapter, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.

(b) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form remains in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(c) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax under the delivery information provided by the purchaser.

(d) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection (a), the seller shall collect the tax according to section 1(d)(5) of this chapter. Nothing in this subsection limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(e) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller."

Renumber all SECTIONS consecutively.

(Reference is to HB 1815 as printed February 19, 2003.)

and when so amended that said bill do pass .

Committee Vote: Yeas 13, Nays 0.

Senator Borst, Chairperson